THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 189 of 1996

13-02-2006

Between:

M/s.Katika Ramulu & Brothers, Rajahmundry.

…Petitioner

And

Commissioner of Income-tax, Visakhapatnam & another.

….Respondents.

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION No. 189 of 1996

ORDER : (Per Hon'ble Sri Bilal Nazki, J)

Heard learned counsel for the parties.

By this writ petition, an order passed by the Commissioner of Income-tax has been challenged.

It appears that an application was filed by the petitioner on 04.2.1984, seeking waiver of penalty. This application was dismissed and thereupon, he filed a writ petition being writ petition No.5851 of 1985. This writ petition was allowed and the matter was remanded back to the Commissioner of Income-tax, by a judgment reported in **K.Ramulu and Bros. V. Commissioner of Income-tax**. The operative portion of the judgment is –

> *"We are, therefore, satisfied that the conclusion of the Commissioner that the petitioner did not make the disclosure in question in good faith is without any valid basis and is vitiated by extraneous considerations. The Commissioner is not justified in holding that the petitioner did not act in good faith in making the disclosures in question. As this is the only reason given by him for not exercising the discretion vested in him under section 273A (1) (ii) of the Act, we set aside the impugned order of the Commissioner in Hqrs.No.1/59/83-84 dated march 12, 1985. Once the preconditions for the exercise of the discretion are satisfied, the Commissioner is bound to exercise his discretion, keeping in view the following observations of the Supreme Court in* ***Hirday Narain (L.) v. ITO [1970] 78 ITR 26, 31.****"*

Categorically the Court was of the view that petitioner had made disclosure in question in good faith and the Commissioner was not right in coming to a conclusion that petitioner had not made the disclosure in question in good faith. The Court found this conclusion of the Commissioner to be without any valid basis and vitiated by extraneous considerations. While remanding the case, the Court directed the Commissioner to keep in view the observations made in the judgment and pass orders afresh.

The Commissioner surprisingly introduced new material to the order which he had passed and as a matter of fact, he even stated that the petitioner had been prosecuted and the Court of Special

Judge for Economic offences had convicted the petitioner and imposed a fine of Rs.500/- for an offence under Section 277 of the Income-tax Act. On the basis of these extraneous grounds, as a matter of fact, he went beyond the judgment of this Court, and he stated –

> *"The Hon'ble High Court restored to this Office the assessee's petition for reconsideration. The Hon'ble High Court came to the conclusion that the assessee made the petition in good faith. Unfortunately certain material facts were not brought to the notice of the Hon'ble High Court. The assessee, in the covering letter for the Revised Returns, admitted in so many words that the income originally assessed for each of the five years under consideration was far below the income earned, and that since the partners were feeling guilty for having suppressed their real incomes, they were filing Revised Returns. On the strength of this evidence, the Special Judge, Hyderabad found the assessee and the partners therein guilty and convicted them for offences u/s.277."*

The Commissioner had thought that certain material was not brought to the notice of the Court. In that case, nobody stopped him to seek clarification from the Court. But in no case, he was within his rights to ignore the judgment of the High Court, which he has done by the impugned order.

On this ground alone that the Commissioner has tried to subvert the judgment of this Court and not implemented the judgment of this Court in letter and spirit, we set aside the order of the Commissioner and remand the case back to him and direct him to dispose of the application within two weeks from today, keeping in view the observations made in this order and also in the judgment cited above.

Writ petition is accordingly allowed. No order as to costs.

(BILAL NAZKI, J)

13th February 2006

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(G.CHANDRAIAH, J)

N.B:

Furnish copy by 14.2.2006.

(B/o)

ajr